



FACULTY CENTER

Bar Fight

Law graduates with learning disabilities go to court over the New York State bar exam

As a nationally recognized expert on clinical assessment of learning disabilities, Corinne Roth Smith '67, G'73 has devoted her entire professional life to helping people understand and overcome learning disabilities. So when two law school graduates with learning disabilities approached her for help after they were denied extra time on the New York State bar exam, Smith naturally agreed

ties and merited accommodations.

Smith is associate dean for academic affairs in the School of Education and founder and director of SU's Psycho-educational Teaching Laboratory, an evaluation clinic for individuals with learning disabilities. She determined through a battery of tests that in both cases the students had legitimate learning disabilities that hampered their reading skills and warranted accommodations on the bar exam. The students' requests for extra time on the test were not unreasonable: It would give them an equal opportunity to demonstrate their knowledge of the law, despite their slow reading speeds. The two had also received accommodations in college and law school. Nonetheless, the board of law examiners, citing the opinion of its own expert on learning disabilities, claimed the students were not learning disabled, and both cases plunged into litigation.

Smith believes the rejections reflect a reticence on the part of the legal profession to accept people who are different. "My life is about facilitating life for other people, helping them onward and upward and not putting barriers in their way," she says. "I've never faced such prejudice and wickedness—it was unbelievable."

In the first case, Smith spent 26 grueling hours testifying on behalf of Jonathan Pazer '82, G'84, an Albany Law School graduate. "It was the worst experience of my life," she says. Despite Smith's assistance, Pazer lost his bid for extra time—as he had after two previous attempts. Eventually he passed the test and dropped the lawsuit, but ended up absorbing the board's legal costs.

"Their view was that my particular subspecies of disability didn't exist," says Pazer, who is now working with his father at Pazer & Epstein in New York City. "My rationale for getting accommodations was a matter of not having enough time to complete the test, because it just takes me more time to read questions and process them. It's like I was hopping and everyone else was running."

David Glass, like Pazer, is an Albany Law School graduate. Unlike Pazer,

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to assist them. Little did she realize that her involvement would lead to an extended civil rights showdown with the New York State Board of Law Examiners, the governing body that administers the bar exam.

At the heart of the controversy was the Americans with Disabilities Act (ADA), a federal law that guarantees "reasonable accommodations" for people with learning disabilities in professional licensing tests—including a state's bar exam. The students turned to Smith after the law board rejected their claims that they had learning disabili-

however, a judge's ruling allowed him to receive double time on the bar exam, which he passed—but his results were sealed until he could prove in court he had a learning disability. His attorneys at the Albany Law School Disabilities Law Clinic turned to Smith, whose evaluation enabled Glass to prove his case. "It was like an enormous weight was lifted," says Glass, who is now working with a solo practitioner in Albany. "I really owe a tremendous debt to Corinne Roth Smith and my attorneys at the Disabilities Clinic. If they hadn't gone to bat for me, I might never have become an attorney in New York State."

But the law examiners' wrangles over learning disabilities appear to be far from over. Each bar exam brings more requests for accommodations, more board rejections, and more court challenges. The Justice Department's Civil Rights Division also has a pending investigation against the board for alleged violations of the ADA. "We consider each situation on its own merits and have always made accommodations for documented disabilities, and continue to," says James T. Fuller, executive secretary of the law examiners board. "We don't prejudice anything."

Smith, who wrote a leading textbook, *Learning Disabilities: The Interaction of Learner, Task, and Setting*, and has served as a consultant to the Justice Department, doesn't budge from her opinion that New York's legal subculture should discard its narrow view of learning disabilities and stop what she sees as discrimination. And that's not easy to say for someone who is married to an attorney and has a daughter in law school. "The board of law examiners is concerned about whether it is reducing the profession's standards," she says. "This really is a tough issue: How far do you go?"

Many lawyers consider "the ability to read, comprehend, and react in a reasonably quick period of time" to be important, Fuller says. "When you give one candidate more time than another, then the test does not measure the same things." Smith, though, counters that reading quickly is not the issue—knowledge of the law is.

More than 8,000 law students are expected to take the July bar exam, Fuller says, and hundreds of requests for accommodations could be made. "I'm not suggesting anyone is trying to be fraudulent," he says. "I'm suggesting that this is a field in which there is no shortage of people claiming the ability to diagnose the situation."

Smith readily admits professionals in her field can overidentify the learning disabled, and that poses a danger. "We as professionals need to make sure that there is integrity to our assessments and that people we identify as disabled really are disabled," she says. "If we



Corinne Roth Smith has been an advocate for law students with learning disabilities in their court challenges.

start calling everybody learning disabled, then the people who really need the help are not going to get it because of the backlash."

Smith's activism follows a tradition at the School of Education that dates back to the days of the late Burton Blatt, the former dean whose book *Christmas in Purgatory* unmasked the sordid conditions at mental institutions back in the sixties. Since then, numerous gains have been achieved—not without fights, of course—in civil rights for people with disabilities, such as mainstreaming adults and children with disabilities back into society and the public schools. Learning disabilities, though, remain a source of consterna-

tion because they are invisible—apparent only when the person processes information in an unconventional way, such as needing more time, a reader, computer, or Dictaphone.

"Our society has come far enough to recognize that people with disabilities are a historically discriminated-against minority. That recognition is good news, but the bad news is we need a law, which shows there's still discrimination," says Steve Taylor, director of the Center on Human Policy at SU, which combats society's discrimination against people with disabilities. "You don't change hearts and minds through laws, and it's ultimately a question of how we are going to live together in this society. That's a much more complicated issue than simply having a civil right."

Just ask Norman Deep, who earned bachelor's ('77) and master's ('79) degrees from SU, as well as a law degree in 1993. Deep, an attorney in Clinton, New York, has had tunnel-type vision and severe dyslexia all his life, making reading, he says, "an impossibility." An injury in Vietnam also left him with a physical disability. At age 44, he was welcomed at the SU law school and found support at the Center for Academic Achievement, which works with the approximately 300 students with learning disabilities at SU.

Growing up was much different for Deep. Learning disabilities didn't count; you were just considered stupid, he says. Deep received accommodations on the bar exam, but says people don't realize that extra time means more mental and physical fatigue. "The main point is most people go from point A to point B. I would have to go from point A to C to D to end up at point B—and that's the standard for anyone with learning disabilities," Deep says. "We can get to point B. We just have to take a different road."

For Smith, making sure that opportunities exist for individuals with learning disabilities is paramount. "We want to maximize the chances that they'll achieve in life what they should achieve," she says, "and be happy."

—JAY COX